

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
ETC Annual Reports and)	WC Docket No. 14-58
Certifications)	
)	

**UPDATE AND PETITION OF TATUM TELEPHONE COMPANY, INC.
FOR AN ADDITIONAL LIMITED WAIVER OF SECTION 54.313(f)(2)(ii)**

COMES NOW Tatum Telephone Company, Inc. (“Tatum”) (Study Area Code 442150) to provide an update and seek additional time on its limited waiver request. On July 1, 2019, Tatum, pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules¹ requested a limited waiver of the requirement specified in Section 54.313(f)(2)(ii).² This rule requires privately held rate-of-return carriers that are not recipients of loans from the Rural Utilities Service (“RUS”) whose financial statements are audited in the ordinary course of business to file a copy of their audited financial statements with their eligible telecommunications carrier (“ETC”) Annual Report (otherwise known as the “Form 481”).³ As part of its request, Tatum stated that it would provide an update and request an additional waiver should it remain unable to comply with the filing requirement following 90 days. Although no action has been taken on its original request, Tatum now requests an additional 90 days and would show as follows:

I. Introduction

On or about September 25, 2018, Hilliary Acquisition Corp, Texas, LLC (“HACT”) entered into a Stock Purchase Agreement with Townes Tele-Communications, Inc. to purchase Tatum.⁴ The purchase

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.313(f)(2)(ii).

³ *Id.* Alternatively, the carrier may file “a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit.”

⁴ *Domestic Section 214 Applications Filed for the Transfer of Control of Tatum Telephone Company, Inc. and Electra Telephone Company, Inc. to Hilliary Acquisition Corp. Texas, LLC*, WC Docket Nos. 18-301 and 18-302, Public Notice, 33 FCC Rcd 10108 (2018).

price was paid, and the transaction was closed on December 30, 2019. Since that time, Tatum, under new ownership, has worked diligently to complete all regulatory approvals and obtain all information necessary to complete all regulatory filings moving forward, including the Form 481. With the exception of the audited financial statements, for which a limited waiver was sought, and additional time is sought herein, Tatum has timely filed the remainder of its Form 481. As an alternative to the audited financial statements, Tatum provided unaudited financial statements as a part of the Form 481 filing that it will supplement as soon as the audited statements become available. The original request was not based merely on the delay of a third-party under control of Tatum; rather, it, and this request for additional time is based in special circumstances beyond Tatum's control that are preventing it from filing full audited financial statements.

II. Waiver Request and Good Cause

Generally, the Commission's rules may be waived for good cause shown.⁵ Furthermore, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶ The FCC has also previously granted similar limited waivers when the ETC had "demonstrated special circumstances beyond its control that preclude[d] it from filing a full and complete audited financial statement by the ... deadline."⁷

Here, Tatum can show special circumstances beyond its control such that a requirement of strict compliance would be inconsistent with the public interest. Specifically, Tatum has yet to receive the necessary documentation from the prior owners to satisfy various financial, audit, and tax reporting obligations. HACT was assured as a part of the purchase agreement with sellers as follows:

5.5 Further Assurances. Each Party agrees to take such further actions and execute and deliver such further documents after the Closing Date as may reasonably be requested by any other Party to (a) vest more fully in the Buyer all right, title, and interest in into the Shares (b) vest more fully in the Shareholder all right, title, and interest in into the Excluded Assets and (c) otherwise consummate or perfect the transactions contemplated hereby. Furthermore, from an after the closing date, each party shall cooperate fully as in to the

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 166(D.C. Cir. 1990) (Northeast Cellular).

⁷ *See Connect America Fund*, Order, 30 FCC Rcd 7100,7101, para. 4-5 (WCB 2015)(*Comporium Waiver Order*).

extent reasonably requested by any other party, and at the expense of such other party, in connection with any third-party litigation, tax audit, or other proceeding or matter relating to events occurring or circumstances existing prior to the closing date.

Since the closing date, Tatum under its new ownership has worked diligently to obtain all necessary records and documents to meet financial, audit, and other obligations, but has been unable to do so. Although HACT is the rightful owner of all books and records of Tatum, sellers continue to fail to turn over such documents. Thus, despite numerous and regular phone conferences and e-mails between January 2019 and mid-June 2019, the responses by the sellers to HACT's requests for the books and records of Tatum remain insufficient to meet obligations, including to complete the financial audits. As a result of this continual failure, a lawsuit for breach of contract, has been filed in Comanche County Oklahoma.⁸ Specific performance, including delivery of the necessary documentation and books of Tatum, are sought in the lawsuit. Since the filing of its original waiver request, Tatum has continued to pursue the lawsuit diligently. Tatum recently received a favorable ruling on venue and is seeking to obtain the documents necessary to complete the audit process through the discovery process. A scheduling order setting all deadlines and a trial date is expected soon now that the question of venue is settled.

Due to these circumstances beyond its control, Tatum requests an additional 90 days on its original limited waiver of the requirement to provide audited financial statements by the July 1 deadline. Until it receives the necessary documentation from sellers, the audits cannot be completed. Tatum provided draft financial statements with its Form 481 and continues to work diligently to obtain the documents necessary to complete its audit. Should the lawsuit to receive the necessary documentation from Sellers not be resolved prior to the expiration of the additional time asked for in this limited waiver, Tatum would provide the FCC with an update and seek an additional waiver. Such a limited waiver would further the public interest as strict compliance with this rule could result in Tatum having its high cost universal service

⁸ See *Hilliary Acquisitions Corp. Texas, LLC; Electra Telephone Company, Inc.; and Tatum Telephone Company, Inc.*, Cause No. CJ-2019-381, filed June 28, 2019 in the United States District Court of Comanche County Oklahoma.

support reduced on a pro-rata daily basis equivalent to the period of non-compliance,⁹ an unjust penalty under the factual circumstances of this case.

III. Conclusion

Tatum respectfully asks that an additional 90 days be added to its original limited waiver request from the requirements of Section 54.313(f)(2)(ii). Due to special circumstances beyond its control, Tatum was unable to provide audited financial statements as a part of the Form 481 filing by the July 1, 2019 deadline. It has also been unable to file a supplement during the original 90 days of its limited waiver request. Due to the factual circumstances set forth above, the public interest would be served by the granting of an additional 90 days to the limited waiver, and Tatum will update its filing with complete audited financials as soon as available to come into full compliance with the rule.

Respectfully submitted,

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⁹ See 47. C.F.R. § 54.313(j).